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APR 08 2019

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *aw* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEREMY ADAM DALTON,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No.: 3:16-cv-1495-BEN
3:12-cr-3367-BEN

**ORDER DENYING MOTION TO
VACATE, SET ASIDE, OR
CORRECT A SENTENCE UNDER
28 U.S.C. § 2255**

Movant Jeremy Adam Dalton filed a Motion to Vacate, Set Aside, or Correct a Sentence pursuant to 28 U.S.C. § 2255. Respondent, the United States opposes the motion. For the reasons set forth below, the Court denies the motion.

BACKGROUND

In 2012, Dalton was charged with the crime of being a felon in possession of firearms and ammunition. He pleaded guilty and was sentenced. Dalton was sentenced to 51 months in prison in April 2013. As part of his plea agreement and during the sentencing, Dalton waived his right to appeal or collaterally attack his sentence. In June 2016, he filed the instant motion for collateral relief under § 2255.

Under § 2255, a movant is entitled to relief if the sentence: (1) was imposed in violation of the Constitution or the laws of the United States; (2) was given by a court

1 without jurisdiction to do so; (3) was in excess of the maximum sentence authorized by
2 law; or (4) is otherwise subject to collateral attack. Title 28 U.S.C. § 2255.

3 DISCUSSION

4 The motion fails on several grounds. *First*, Movant validly waived his right to
5 collaterally attack his sentence. The record discloses no issues as to the voluntariness of
6 the plea and waiver. *Second*, under § 2255(f), the motion is untimely as it was filed more
7 than twelve months after his conviction became final. Here, the motion is untimely and
8 is barred by the statute of limitations. *Third*, contrary to his contentions, Movant's
9 sentence was not unconstitutionally enhanced under *Johnson v. United States*, 135 S. Ct.
10 2551 (2015). In *Johnson*, the Supreme Court considered language in the Armed Career
11 Criminal Act ("ACCA"). The Supreme Court examined the definition of "violent
12 felony" and held that a portion of that definition known as the "residual clause" is void
13 for vagueness. However, Movant was not sentenced under the residual clause of the
14 violent felony definition of the ACCA. Rather, he was sentenced pursuant to 18 U.S.C.
15 § 3553 as guided by the U.S. Sentencing Guidelines § 2K2.1(a). When it was still an
16 open question, Movant challenged the U.S. Sentencing Guidelines as unconstitutionally
17 vague based on the same reasoning as *Johnson*. However, since the motion was filed, the
18 Supreme Court has rejected the argument in *Beckles v. United States*, 137 S. Ct. 886
19 (2017), holding that the federal Sentencing Guidelines are not subject to vagueness
20 challenges under the Due Process Clause.

21 Therefore, the motion is denied because: (1) Movant validly waived his right to
22 collateral attack; (2) the motion is barred by the statute of limitations; and (3) the motion
23 is without merit.

24 CONCLUSION

25 The Motion to Vacate, Set Aside or Correct Sentence is **DENIED**.

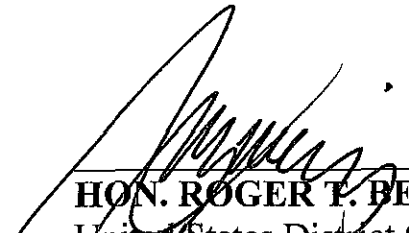
26 A court may issue a certificate of appealability where the movant has made a
27 "substantial showing of the denial of a constitutional right," and reasonable jurists could
28 debate whether the motion should have been resolved differently, or that the issues

1 presented deserve encouragement to proceed further. *See Miller-El v. Cockrell*, 537 U.S.
2 322, 335 (2003). This Court finds that Movant has not made the necessary showing. A
3 certificate of appealability is therefore **DENIED**.

4 **IT IS SO ORDERED.**

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6 Dated: _____

7 *4/08/2019*

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HON. ROGER T. BENITEZ
United States District Court Judge